EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (TOUR OPERATORS) (AMENDMENT) ORDER 2009

2009 No. 3166

1. This Explanatory Memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

   This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of this instrument

2.1. This instrument withdraws the provision which permits tour operators to opt out of the Tour Operators' Margin Scheme (TOMS) in order to exclude travel services supplied to other businesses for their own consumption.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1. None.

4. Legislative context

4.1. This Order has been made by the Treasury in exercise of the powers under section 53(1) and (2) of the Value Added Tax Act 1994 ("VAT Act") and amends the Value Added Tax (Tour Operators) Order 1987 (SI 1987/1806).

4.2. Section 53(1) of the VAT Act provides that the Treasury may by order modify the application of the Act in relation to supplies of goods or services by tour operators or in relation to such of those supplies as may be determined by or under the order.

4.3. Section 53(2) provides that, without prejudice to the generality of subsection (1), an order under this section may make provision for two or more supplies of goods or services by a tour operator to be treated as a single supply of services; and for the value of that supply to be ascertained, in such manner as may be determined by or under the order, by reference to the difference between sums paid or payable to and sums paid or payable by the tour operator. An order may also make provision as to the time when a supply is to be treated as taking place.

4.4. Section 53(3) defines "tour operator". This includes a travel agent acting as principal and any other person providing for the benefit of travellers services of any kind commonly provided by tour operators or travel agents.

4.5. The Value Added Tax (Tour Operators') Order 1987 sets out the requirements for the treatment of supplies falling within sections 53(1) and 53(2) of the VAT Act:

4.6. Article 3 of the Order specifies the meaning of "designated travel service".

4.7. Article 3(3) provides that where the appropriate notice is given by the tour operator, the Commissioners may treat the supplies that are bought in and listed at article 3(3)(b) as not being supplies of a designated travel service.

4.8. Article 4 of the Order provides that the tour operator shall elect for one of two methods of determining the date on which the supply shall be treated as taking place. Article 4(2) provides that this is either 1) date of commencement of journey, or occupation of accommodation; or 2) the date when a payment which meets the conditions in article 4(2)(b) is received by the tour operator.

5. Territorial Extent and Application

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. TOMS is a simplification measure for tour operators and other travel service providers based in the EU. EU businesses providing tour packages will usually buy in a variety of supplies (particularly transport and accommodation) from suppliers in various Member States to put together a tour package for their customers. Under normal VAT rules, they would be liable to register and account for VAT in each of those Member States. The scheme allows tour operators to have a single VAT registration in the Member State where they are established and to account for VAT in that Member State. This relieves them of the burden of having to register in all the Member States where travel packages are provided.

7.2. The TOMS ensures that VAT is accounted for in the Member States where the supplies are consumed by preventing tour operators from obtaining a refund of any VAT charged to them on purchases of goods and services relating to the individual elements that make up the package. The tour operator's supply is then taxed, not on the basis of the full selling price, but on the difference between the cost of the purchases and the price obtained for them. So, for example, a tour operator based in the UK who books accommodation in Italy cannot reclaim the Italian VAT charged on the accommodation, but will account for UK VAT on the gross profit achieved when selling that accommodation on to the traveller. This margin is calculated on a global basis, rather than package by package. As the tax due on individual supplies is not known, tour operators cannot issue invoices showing the amount of VAT to business customers.

7.3. The VAT (Tour Operators) Order 1987 implements what is now set out in Articles 306 – 310 of Council Directive 2006/112 on the common system of value added tax (the Principal VAT Directive) which are concerned with supplies to the "traveller". The "traveller" is the one that consumes the travel and the term "traveller" must not be restricted to a physical person who consumes the travel package. It also covers legal persons that consume the travel package, including businesses which pay for travel packages intended for and consumed by their staff.

7.4. The UK has permitted operators to exclude supplies to business for their own consumption from the scheme, in order that the supplies could be invoiced under the normal rules and therefore allowing the purchasing business to recover the VAT charged.

7.5. Article 3 of this Order makes an amendment to the TOMS which is required by Community law. As a result of correspondence with the European Commission in 2007, the UK accepted that the scheme must be applied where a travel agent supplies travel services to a traveller, and all of the conditions laid down in Articles 306 to 310 of the Principal VAT Directive are met.

7.6. As such, Community law requires the withdrawal of the "opt out" for supplies of travel services to businesses for their own consumption. This means that tour operators must account within the normal TOMS for these supplies and that business customers will no longer be able to recover any hidden VAT charged by the tour operator.

7.7. A tour operator who has opted out of the TOMS would be liable to account for VAT under the normal rules for all supplies which are made prior to1 January 2010.

7.8. Operators in TOMS pay tax only on their profit margin and so are not entitled to recover input tax on the costs incurred in providing the supply. The operator may have paid costs prior to 1st January 2010 relating to supplies which are made on or after 1 January 2010 and which fall within the TOMS. At the time of receipt of the invoice, the operator would have been entitled to recover input tax charged. However, when the supply falls into TOMS, input tax is no longer recoverable.

7.9. Article 9A provides that adjustments may be made to the calculation of tax due on the margin, to take account of payments made by the operator prior to 1 January 2010 which relate to TOMS supplies made on or after that date, in order that the correct amount of tax is accounted for.

7.10. Between 6 June 2008 and 31 August 2008, an informal consultation exercise was carried out on a number of issues concerning TOMS. In relation to this

Order, the consultation sought to establish what would be a reasonable transitional period for industry to put into place necessary changes.

Consolidation.

There are no plans to consolidate The VAT (Tour Operators) Order 1987 (SI 1987/1806) as a result of this minor amendment.

8. Consultation outcome

8.1 A number of travel trade and accountancy representative bodies were consulted as to what would constitute a reasonable transitional period. The majority of respondents felt that the proposed implementation date of 1 April 2009 did not give sufficient time for businesses to change their systems in order to comply with the new requirements. As a result of this, the implementation date was postponed until 1 January 2010.

9. Guidance

9.1 Revenue and Customs Brief 27/09 was published on 6 April 2009, setting out the changes to the TOMS and announcing the implementation date of 1 January 2010. Public Notice 709/5, which explains the Tour Operators' Margin Scheme, has been updated to reflect the changes and is due to be published in November 2009.

10. Impact

10.1 The impact on business is that operators will no longer treat sales to other businesses for their own consumption under the normal rules but will account for them under TOMS. As business customers will no longer receive VAT invoices, they will not be able to recover VAT on these supplies. An impact assessment is attached to this memorandum.

10.2 There may be a minimal impact on the provision of school trips to local authority schools. However, the vast majority of school trips do not fall within TOMS and will remain unaffected. The impact on charities or voluntary bodies is nil.

10.3 A full impact assessment of the effect of this instrument will have on the costs of business and the voluntary sector is available on the HMRC website at http://www.hmrc.gov.uk/better-regulation/ia.htm.

11. Regulating small business

11.1 This legislation applies to small businesses. HMRC has been in contact with trade associations in order to explain the changes and help them put into place procedures to comply with the new requirements.

11.2 The TOMS is a simplification measure which relieves the tour operator of the burden of registering and accounting for VAT in more than one member state. In requiring businesses to operate within the scheme, HMRC is reducing the administrative burden.

12. Monitoring and review

12.1 HMRC staff, as part of the assurance of the businesses affected, will monitor compliance with the change in VAT treatment. Those businesses will be subject to the usual enforcement procedures for VAT registered businesses.

13. Contact

Susan Kaye at HMRC: telephone 0207 147 2852, or email
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Summary: Intervention & Options		
Department /Agency: HMRC	Title: Impact Assessment of the implementation of EC legislation regarding the operation of the Tour Operators' Margin Scheme	
Stage: Implementation	Version: 1	Date: 30 November 2009
Related Publications: Council Directive 2008/8/EC of 12 February 2008,		

Available to view or download at:

http://www.hmrc.gov.uk/ria/index.htm#full.

Contact for enquiries: Kathy Clarke   Telephone: 0207 147 0060

What is the problem under consideration? Why is government intervention necessary?

The Tour Operators' Margin Scheme (TOMS) is a special scheme which is mandatory for tour operators and travel agents who buy in and resell travel services for the benefit of the traveller. However, the UK scheme includes concessions which allow businesses to opt in or opt out of the scheme. In March 2007, the European Commission wrote to the UK stating that it considered that these options are contrary to European law, as is the failure to amend the method of calculating the taxable margin in line with the ECJ decision in MyTravel, and the UK agreed to make changes.

What are the policy objectives and the intended effects?

In order to comply with EC law it is proposed to:

1) withdraw an opt-out from the TOMS for supplies made to businesses for their own consumption (i.e. business travel);

2) withdraw an opt-in for 'wholesale' sales of travel supplies (i.e. supplies made between businesses for resale); and

3) introduce a 'market value' method for calculating the value of in house supplies as part of apportioning the TOMS margin.

What policy options have been considered? Please justify any preferred option.

Option 1: Make changes in order to comply with EC law. This is the preferred option.

Option 2: Do nothing. We do not consider that this is a viable option. The UK has already accepted that it is in breach of Community law and we can assume that the Commission would continue with infraction proceedings if we were to adopt this option. We consider that the UK would almost certainly lose before the European Court.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

HMRC intends to review the policy as above within three years.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs'.

Signed by the responsible Minister:

Date: 30 November 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: make changes in order to comply with EC law

COSTS

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'. Businesses will need to spend time familiarising themselves with the changes. Following the withdrawal of the opt-out some businesses will now have to use TOMS, where they did not before and this will increase the cost of making a VAT return. Businesses affected by the withdrawal of the opt-in will now have to issue tax invoices.
One-off (Transition)	Yrs	
£ 110,000		
Average Annual Cost (excluding one-off)		
£ 87,500		Total Cost (PV) £ 850,000

Other key non-monetised costs by 'main affected groups'

None

BENEFITS

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Businesses who are no longer using the opt-out will not have to issue tax invoices for those supplies which now fall within TOMS.
One-off	Yrs	
£ 0		
Average Annual Benefit (excluding one-off)		
£ 60,000		Total Benefit (PV) £ 500,000

Other key non-monetised benefits by 'main affected groups'

None

Key Assumptions/Sensitivities/Risks It is assumed that around 3500 businesses currently use TOMS. We estimate around 200 businesses will be affected by the withdrawal of the opt-out and approximately 25 by the withdrawal of the opt-in. It is estimated that the withdrawal of the opt-out could lead to an increase in business travel costs of up to £165 million.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) -£350,000

What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			1/1/2010	
Which organisation(s) will enforce the policy?			HMRC	
What is the total annual cost of enforcement for these organisations?			£ Not quantified	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £ 87,500	Decrease of £ 60,000	Net Impact	£ 27,500

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

1. The issue

Summary of the UK Tour Operators' Margin Scheme (TOMS)

1.1 The Tour Operators' Margin Scheme (TOMS) is an EC VAT accounting scheme and simplification measure for tour operators and other travel service providers based in the EC. Under the normal VAT rules, those businesses buying and selling various elements of their travel packages in different Member States would be liable to register and account for VAT in each of the Member States. The TOMS enables tour operators to register in just the Member State in which they are established, rather than in all Member States where they provide travel services, thus significantly reducing their administrative burdens.

1.2 Under the scheme, the supply of certain specified travel supplies (supplied either singly or packaged together) is treated as a single taxable supply, taxed at the standard rate of VAT. Tour operators account for VAT on their profit margin, but unlike under normal VAT rules, they are prevented from recovering input tax incurred on scheme purchases. Additionally, VAT invoices are not issued in relation to TOMS supplies, as input tax recovery on such purchases is similarly blocked. This mechanism ensures that VAT is accounted for on the underlying services in the Member State where they take place by the third party provider (for example the hotel, transport provider, car hire business) and VAT on the tour operators' profit margin is accounted in the Member State where they are established.

The European Commission's concerns with aspects of the UK's operation of the TOMS

1.3 The European Commission wrote to the UK in 2007 raising concerns about several aspects of the UK's operation of the TOMS which it believed were not fully compatible with the Principal VAT Directive.

1.4 The issues raised by the Commission concerned:

- the treatment of supplies to business customers for their own consumption and supplies of educational school trips. This is referred to in the impact assessment as the opt-out.
- the treatment of supplies to business customers for subsequent resale. This is referred to in the impact assessment as the opt-in.
- the use of market values (selling prices) in the calculation of the in-house element of the taxable margin.

1.5 The UK now accepts that these aspects of the scheme were not implemented adequately, and have given a commitment to the European Commission to amend the TOMS, in order to comply with European law.

Purpose of this impact assessment

1.6 This impact assessment combines the impacts on, and associated costs to, business as a result of the UK legislative changes being introduced.

1.7 All tour operators will need to consider whether it is appropriate for them to use the market value method of calculation, but different businesses will be affected by the withdrawal of the opt-in and opt out . Withdrawal of the opt-out(s) will affect mainly business travel suppliers, i.e. businesses that provide corporate travel services and those that organise conferences. However, only those making supplies as principal that have to be accounted for using the TOMS will be affected by this change. It will also affect the business customers buying in travel services. For the purpose of this impact assessment, HMRC has attempted to quantify the impacts for each individual change, as this is the only practical way of measuring the potential costs.

2 Policy objectives and intended effects

Removal of the opt-out and opt-in

2.1 To achieve the outcome that the scheme is applied, as intended, to services which are supplied "for the direct benefit of the traveller". The term "traveller" should not be restricted to the physical person who consumes a travel package, but also covers legal persons that consume the travel package, for example, businesses which pay for employee travel and the supply of school trips to local authorities. This means that supplies made to businesses for their own consumption will be accounted for within the scheme, while supplies made to businesses for resale will be excluded.

Market values

2.2 To implement within UK legislation provisions for a market value based calculation in accordance with the decision of the European Court of Justice (ECJ) in MyTravel. In this case, the ECJ ruled that a tour operator must, in principle, identify the part of the package corresponding to his in-house services on the basis of their market value where that value can be established.

3. The Options

The changes to the UK TOMS covered by this impact assessment :

Change 1 The opt-out

3.1 The UK TOMS ordinarily includes travel services which are supplied to other businesses for their own consumption. However, it also recognises that, as no tax invoices are issued for TOMS supplies, businesses receiving supplies within the scheme have no right to recover input tax. The UK therefore currently allows an opt-out of the TOMS in respect of such supplies, allowing business customers to recover VAT charged on those supplies, subject to the normal rules.

3.2 From 1 January 2010 operators will no longer be able to exclude from the scheme sales to other businesses for their own consumption, and businesses receiving supplies of travel services from tour operators will no longer be able to recover VAT on such supplies. This will be achieved by repealing Article 3(3) of the Value Added Order 1987.

3.3 The UK has also treated the provision of school trips as a non business activity for VAT purposes and allowed them to be excluded from the TOMS, enabling local authorities to recover the VAT charged in relation to Local Authority schools. With effect from 1 January 2010, tour operators will no longer be permitted to exclude these supplies from the special scheme, with the result that LA schools will no longer be able to recover VAT on UK school trips purchased from tour operators. Tertiary law (TL2 in Public Notice 709/5) will be also be amended to reflect this change.

Change 2 The opt-in

3.4 HMRC has allowed tour operators who generally engage in normal holiday sales to the travelling public but who occasionally sell to other travel businesses for onward resale the option of accounting for tax on the latter in the special scheme (the opt-in). This was intended to ease the administrative difficulties that operators might otherwise incur in having to use the normal VAT rules to account for occasional supplies of travel services to other businesses.

3.5 These supplies are not for the direct benefit of the traveller and, accordingly, businesses will no longer be able to include such sales within their TOMS calculations. The concession in Notice 709/5 will be withdrawn. Those tour operators affected will have to change their practices to account for the VAT due on these supplies under the normal VAT rules. The cost of registering for VAT and complying with the requirements of other tax authorities will vary according to each Member State and has not been quantified.

3.6 The VAT package which comes into effect on 1 January 2010 may also impact on wholesalers: the place of supply of hotel and holiday accommodation will remain where the land is located, but other packages where there is no predominant supply will fall under the new general rule for supplies to business customers, that is, where the customer belongs. In these cases, there is no need for the wholesaler to register in other Member States, as the customer will be required to account for VAT under the reverse charge.

Change 3. Market values

3.7 Travel packages sold by tour operators commonly consist both of elements that are purchased for resale, and are therefore subject to TOMS, and elements that are provided from the operator's own resources ("in-house supplies"), that are not subject to the scheme. An example is a package holiday comprising a flight in the operator's own airline and an overseas hotel room purchased by the operator. The price paid by the customer needs to be apportioned between the various elements which constitute the package, in order to determine the tax due on the margin, and this is done in the TOMS annual calculation.

3.8 The current UK TOMS calculation (as detailed in Notice 709/5) requires the margin to be apportioned with reference to the actual costs incurred by the operator (i.e. the "cost-based method") in putting together the package. However, the European Court of Justice (ECJ) decision in the case of MyTravel (C-291/03) ruled that, where it is possible to establish an appropriate market value for that part of the selling price which corresponds to the in-house supplies, this should be used to apportion the selling price between in-house and bought-in components. The margin can then be calculated on each of these elements, and the tax computation completed accordingly. However, the cost based method can still be used where this accurately reflects the actual structure of the package, or where it is not possible to ascertain a market value.

3.9 Tertiary legislation included in Notice 709/5 currently provides for the cost-based method: this is being updated to include a calculation based on market values.

Consultation

4.1 HMRC consulted informally with industry representative bodies, the JVCC and other professional bodies for a three month period ending 31 August 2008. The consultation paper set out the legal background to the Commission's action and explained that the purpose of the consultation was to ensure that the changes are introduced with the minimum impact on business and with an appropriate transitional period.

4.2 HMRC consider that the UK is obliged to make the changes in order to comply with European law. Given the lack of scope for discretion on the issue, therefore, the consultation was limited in nature: the only point open to consultation was whether the proposed transitional period was reasonable.

4.3 Respondents to the consultation accepted the necessity for the changes, but felt that the proposed transitional period did not give sufficient time for industry to put in place processes to comply with the new requirements. Accordingly, the implementation date was postponed from 1 April 2009, as originally proposed, to 1 January 2010.

Costs

5.1 The sections (5.4 – 5.25) below examine the impacts on business, on a costs basis , of the changes covered under Option 1

5.2 HMRC is subject to quantified targets to reduce one aspect of compliance costs, in particular, the administrative burden on business of disclosing information to HMRC or to third parties. This burden is assessed through the 'Standard Cost Model', an activity-based costing model which identifies what activities a business has to do to comply with HMRC's obligations, and which estimates the cost of these activities, including agent fees and software costs.

Costing assumptions

5.3 A brief outline of the Standard Cost Model is in the annex to this Impact Assessment. The report to HMRC is available online at: http://www.hmrc.gov.uk/better-regulation/kpmg1.pdf

Change 1 Opt-out

Population affected

5.4 Based on responses to the consultation exercise and to the best of our own knowledge, we estimate that around 200 businesses are currently using the TOMS opt-out for sales of travel supplies to businesses for their own consumption. The withdrawal will mean that from 1 January 2010 businesses will have to use the TOMS to account for these sales. We estimate around half of these are already using the TOMS to account for VAT on other supplies, so they will already be familiar with the scheme. Other businesses will have to implement changes to their accounting systems and familiarise themselves with the scheme

5.5 We have not been able to quantify the impact of withdrawal on Local Authority schools, however this is believed to be minimal. This is because removal of the opt-out will not affect day trips organised directly by the school involving simply coach transport and entry to zoos, museums etc, which do not fall within TOMS, nor will it affect overseas trips as LA's are not currently permitted to recover VAT associated with these supplies. We believe this covers the majority of cases. There will be no changes for non-LA schools, youth clubs or colleges, as they can not use the opt-out currently. Responses to our consultation also pointed out that many of the specialists in providing educational trips for schools supply services entirely from their own resources, and so these would not fall within the TOMS.

5.6 We have assumed that those 100 businesses that already use the TOMS will only need to familiarise themselves with the new rules and that this will take on average around an hour. The remaining 100 businesses that do not currently use the TOMS will in addition need to familiarise themselves with how the margin scheme works and we have tentatively estimated that this will take on average around 5 hours. Based on average hourly costs from the standard cost model this produces a cumulative compliance cost of around £15,000.

5.7 System changes - Based on our knowledge of the computer accounting systems used by tour operators, the changes required will be relatively minor. We have assumed that businesses will require on average around 2 hours to implement the necessary system changes. Based on average hourly costs from the standard cost model this produces a cumulative compliance cost of around £10,000.

5.8 This gives total compliance costs of around £25,000.

Admin burdens

5.9 For those businesses that do not currently use TOMS, there will be an increase in administrative burdens, as the cost of submitting a quarterly return using TOMS is greater than that of a fully taxable business that operates under normal VAT accounting rules. Based on the additional costs imposed by TOMS, as outlined in the standard cost model, we estimate that the increase in annual administrative burdens for the approximately 100 businesses that will now have to use TOMS will be around £80,000 in total, an average of £800 per business.

5.10 This additional cost will be offset in part by the fact that there is no requirement to issue a VAT invoice in regard to supplies that have been made under TOMS.

5.11 We have tentatively estimated that each of the affected 200 businesses currently issue on average around 200 invoices a year under the opt-out The standard cost model gives an average cost per invoice of around £1.50, so this would give an annual cost saving of around £60,000.

5.12 This gives a total net increase in administrative burdens of around £20,000 per year.

5.13 As a result of the withdrawal of the opt-out, some of the affected 200 businesses may no longer be required to register for VAT in other EC Member States, as TOMS is an EC wide simplification measure which prevents tour operators from having to register in other Member States. The savings incurred from no longer having to register for VAT and comply with the requirements of other tax authorities will vary according to each Member State and has not been quantified.

Business customers

5.14 Use of the TOMS for supplies made to businesses for their own consumption will mean that the purchasing businesses will no longer be able to recover VAT on these supplies, as they will no longer receive a VAT invoice and will therefore incur hidden VAT. This is irrecoverable VAT charged to the tour operator and passed on to the customer and VAT on the tour operator's margin, although not all of this additional VAT would accrue to the UK. As a result, it is estimated that the withdrawal of the opt-out could lead to a maximum cost to business of around £165 million a year from the additional stuck VAT, although businesses may be able to mitigate this by providing their business travel services in-house rather than outsourcing to travel management companies. For these reasons, and taking into account that a proportion of this amount will accrue outside the UK, we have tentatively estimated that this change will result in an increased UK revenue yield of around £50 million a year.

Change 2 Opt-in

5.15 Withdrawal of the opt-in will affect travel suppliers making supplies, as principal, to other businesses, who will themselves sell the supplies on. Based on responses to the consultation exercise and to the best of our own knowledge , we believe that the TOMS opt-in is not widely used and we estimate that around 25 businesses only are currently using it.

5.16 However, there may be a small number of businesses that have opted into TOMS which are currently not liable to register because the VAT registration threshold for TOMS businesses is based on the margin achieved, rather than the turnover. They may now be liable to register and this will increase the numbers affected.

5.17 The withdrawal will mean that from 1 January 2010 these businesses will have account for these sales as necessary under the normal rules, rather than using TOMS.

5.18 We have assumed that the 25 businesses will require on average around 2 hours to familiarise themselves with the new rules and, using average hourly costs from the standard cost model, this produces a cumulative compliance cost of around £1,500.

5.19 Again, based on our own knowledge, we have assumed that these businesses will require on average around 2 hours to implement the necessary system changes. Based on average hourly costs from the standard cost model, this produces a cumulative compliance cost of around £1,500.

5.20 We have tentatively estimated that there will be around 250 businesses that, as customers, will be affected by the changes and they will each require around an hour to familiarise themselves with the fact that these supplies will now be invoiced using normal VAT rules, rather than the TOMS. Using average hourly costs from the standard cost model, this produces a cumulative compliance cost of around £6,500.

5.21 This gives total one off compliance costs of around £10,000.

Admin burdens

5.22 The impact on administrative burdens as a result of the withdrawal of the opt-in will be that businesses will now have to issue a VAT invoice for supplies previously made under the opt-in. HMRC understand that most, if not all businesses affected, already declare VAT on some supplies under the normal system. In this case, traders will face the ongoing costs of operating (and declaring VAT) under two systems. But, if the supplies as a result of the opt-in are made in other Member States , this won't apply (see paragraph 5.28 below).

5.23 We have also tentatively estimated that each of the affected 25 businesses will now have to issue on average around 200 invoices a year. Based on an average cost per invoice of around £1.50, this would give an annual cost of around £7,500.

5.24 There are a small number of wholesalers whose margin is below the taxable threshold, who chose to opt in to the scheme and have not been required to register. Once the opt-in is withdrawn, these supplies will be accounted for under normal rules, and the wholesaler may be liable to register and account for VAT, if the place of supply of his services is the UK (see below).

Registration in other EU member states

5.25 As a result of the withdrawal of the opt-in, the normal place of supply rules will apply. A few of the affected 25 businesses may now be required to register for VAT in other EC Member States. The cost of registering for VAT and complying with the requirements of other tax authorities will vary according to each Member State and has not been quantified.

5.26 There is also an interaction with the changes to the place of supply of services under the VAT package, which are also due to take effect from 1 January 2010. This may reduce the few above that might be liable to register elsewhere. This is because, although the place of supply of accommodation and of passenger transport remain unchanged, where an operator is providing a package and no one service predominates, this will fall under the new general rule for supplies to business customers, and such customers belonging in other Member States will account for VAT under the reverse charge provisions.

Change 3 Market values

5.27 Based on the standard cost model, we estimate that there are currently around 3500 businesses that use TOMS. All of them will need to consider this change to decide how relevant, if at all, it is to their business. We estimate that only 500 of the businesses will need to give the matter serious consideration as, in the other 3000 businesses, it will be soon become clear it has no effect. Our experience of the few market values put forward by businesses to date (using direct effect) has shown the difficulty of establishing an appropriate market value and we do not anticipate that this can be applied widely.

Familiarisation costs

5.28 Businesses will need to familiarise themselves with the new rules and decide whether or not the use of market values is appropriate to their business.

5.29 Most businesses that use TOMS will be able to make a quick decision on this and we have assumed that around 3,000 of TOMS businesses will only need around half an hour to make this decision. The remaining 500 will need to take longer and we have estimated that on average this will be around 3 hours. Based on average hourly costs from the standard cost model, this produces a cumulative compliance cost of around £75,000.

5.30 Systems changes. For businesses that do need to use the market value method, there may be minor accounting system changes required but the costs should be minimal, as the new method simply adds extra steps to the processes already in use.

Administrative burdens

5.31 The marginal impact on the ongoing administrative burdens of those individual businesses that need to use the market value method is un-quantified.

Summary of Overall Cost

5.32

	Estimated one off compliance costs	Estimated Annual Admin Burden costs/(savings)
Withdrawal of opt out	25,000	20,000
Withdrawal of opt in	10,000	7,500
Market Values	75,000	Un-quantified
Total	110,000	27,500

6. Small Firms Impact Test

6.1 These changes apply to the whole market. TOMS is a mandatory scheme and the UK does not have power to exempt small businesses from the scheme. Responses to the consultation paper were received from specialist business travel associations and from individual traders, indicating that the proposed transitional period did not give business sufficient time to comply with the changes and, accordingly, the implementation date was postponed from 1/4/09 to 1/1/10. Since the circulation of the consultation paper, HMRC has been in contact with trade associations to explain the new legislation and help them put into place procedures in order to comply with new requirements.

6.2 HMRC understand that small firms represent a significant proportion of the specialist business travel sector and therefore the impact of the withdrawal of the opt-out will have a greater impact on these businesses than the other changes.

6.3 HMRC do not believe that the opt-in is widely used. The consideration of market values applies to all sectors of the industry. However, HMRC do not anticipate that this method of calculation will be capable of widespread use.

7. Competition Assessment

7.1 Opt-in. HMRC view the opt-in as an administrative easement, which is not widely used, so its removal will have little competitive effect

7.2 Opt-out. If the travel service provider continues to provide these supplies on the same basis within TOMS, this will increase the cost of his supply, as business customers will no longer be able to recover VAT. HMRC do not know to what extent business will change behaviours and business models in order to mitigate the effect of the changes, but there is anecdotal evidence that business travel providers are switching to agency status so that TOMS will not apply.

7.3 The consideration of market values applies to all sectors of the industry. However, HMRC do not, in any case, anticipate that this method of calculation will be capable of widespread use, so will have little competitive impact.

8. Other impacts

8.1 The initial equality impact assessment has been completed and it is considered that no further work is required under this heading. These changes are not expected significantly to increase legal aid impacts. They will be in accordance with the principles of sustainable development and will have no significant impact on emissions of greenhouse gases or other environmental impacts. They are compatible with the Human Rights Act. They will not have a significantly different effect in rural areas.

8.2 Neither will they significantly impact on:

- health and well being;
- race equality;
- disability equality; or
- gender equality

9. Enforcement, sanctions and monitoring

HMRC staff, as part of the assurance of the businesses affected, will monitor compliance with the change in VAT treatment. Those businesses will be subject to the usual enforcement procedures for VAT registered businesses. No additional cost for HMRC is envisaged as a result of this.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

The 'Standard Cost Model' (SCM) has been used to derive an estimate of the costs to business of complying with HMRC obligations to disclose information to HMRC or to third parties. The SCM considers which activities a business has to do to comply with an HMRC obligation, how many businesses have to comply, and how often they need to comply. The SCM considers the burdens applying to different sizes of business.

The SCM estimates the costs of using agents; the costs of undertaking work in-house; and the costs of actually transmitting the information. The SCM does not consider one-off costs or transitional costs. The SCM does not consider costs which a business would have incurred anyway had the relevant HMRC obligation not existed. It considers the costs which apply to a normally efficient business and the costs to businesses which comply. The SCM does not consider wider compliance cost issues, such as the costs of business uncertainty, cash flow costs, or the costs of deciding whether or not to do something.

The Impact Assessment template requires SCM figures to be presented in May 2005 prices, as admin burden reduction targets relate to a May 2005 baseline. The Impact Assessment also uplifts those figures to current day prices.